

Amendments to the Drawings:

The attached sheet of drawings includes changes to Fig. 1. This sheet, which includes Figs. 1-2, replaces the original sheet including Figs. 1-2. In Fig. 1, descriptive labels for blocks 1-5 have been provided.

Attachment: Replacement sheet

REMARKS

I. Introduction

Claims 11 to 20 are currently pending in the present application. Claim 11 has been amended.

In response to the Examiner's objection to the drawings, Applicants have attached a replacement drawing sheet containing amended Fig. 1, which now includes descriptive labels for blocks 1-5.

Applicants note that the Examiner has not acknowledged the claim for foreign priority, and there is no indication of whether certified copies of the priority documents have been received or not. Applicants request that the Examiner acknowledge the claim for foreign priority and provide an indication of whether certified copies of the priority documents have been received.

II. Rejection of Claims 11-15, 18 and 19 under 35 U.S.C. § 102(e)

Claims 11-15, 18 and 19 are rejected under 35 U.S.C. §102(e) as being anticipated by United States Patent No. 6,717,518 ("Pirim"). For at least the following reasons, the anticipation rejection of pending claims 11-15, 18 and 19 should be withdrawn.

To anticipate a claim under §102(e), each and every element as set forth in the claim must be found in a single prior art reference. Verdegaal Bros. v. Union Oil Co. of Calif., 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987). Furthermore, "[t]he identical invention must be shown in as complete detail as is contained in the . . . claim." Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236, 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989). That is, the prior art must describe the elements arranged as required by the claims. In re Bond, 910 F.2d 831, 15 U.S.P.Q.2d 1566 (Fed. Cir. 1990). To the extent that the Examiner may be relying on the doctrine of inherent disclosure for the anticipation rejection, the Examiner must provide a "basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristics necessarily flow from the teachings of the applied art." (See M.P.E.P. § 2112; emphasis in original; see also Ex parte Levy, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990)).

Claim 11 has been amended to recite, in relevant parts, “using at least one sub-model which is subdividable into further sub-models for at least one selected body part of a human, wherein the at least one sub-model is selected from a hierarchically-structured model data set including different sub-models for the at least one selected body part; adapting the sub-models using the spatial data, wherein the adaptation is checked by position parameters between the sub-models of different body parts; and recognizing the person using a complete model made up of checked sub-models.” As amended, claim 11 explicitly recites using a hierarchically-structured model data set, and that different sub-models are provided for a body part. The amended language is fully supported by the original specification, e.g., p. 1, lines 28-30; p. 7, l. 15-20; p. 8, l. 14 – p. 9, l. 12; p. 9, l. 29 – p. 10, l. 3; and Figs. 4 and 5.

The cited Pirim reference relates to a method of detection of drowsiness of a driver, in which method a sub-area of an image including the eye is determined prior to the step of selecting pixels of an image corresponding to the eye. (See, e.g., col. 2, l. 32-34 and 41-44). In order to identify the sub-area of the image containing the eye, the head or facial characteristics are identified first, which identified characteristics are then used in conjunction with an anthropomorphic model to subsequently identify the sub-area containing the eye. (See, e.g., col. 2, l. 46-50). Since Pirim teaches initially identifying an overall area, e.g., head, in order to identify a sub-area of the overall area, it is clear that Pirim fails to teach or suggest the claimed feature of “recognizing the person **using a complete model made up of checked sub-models**.” In addition, Pirim clearly does not teach or suggest anything relating to the claimed feature of “**adapting the sub-models using the spatial data**, wherein the **adaptation is checked by position parameters** between the sub-models of different body parts”; instead, Pirim merely discloses using histograms in order to identify facial characteristics. Furthermore, Pirim clearly does not teach or suggest that **different sub-models are provided for a body part**, let alone anything even remotely relating to a hierarchically-structured model.

For at least the foregoing reasons, amended claim 11 and its dependent claims 12-15, 18 and 19 are not anticipated by Pirim. Therefore, withdrawal of the anticipation rejection is respectfully requested.

III. Rejection of Claims 16 and 20 under 35 U.S.C. § 103(a)

Claims 16 and 20 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Pirim in view of U.S. Patent 6,324,453 ("Breed"). Applicants respectfully submit that claims 16 and 18 are allowable for at least the following reasons.

In rejecting a claim under 35 U.S.C. § 103(a), the Examiner bears the initial burden of presenting a prima facie case of obviousness. In re Rjickaert, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). To establish prima facie obviousness, three criteria must be satisfied. First, there must be some suggestion or motivation to modify or combine reference teachings. In re Fine, 837 F.2d 1071 (Fed. Cir. 1988). This teaching or suggestion to make the claimed combination must be found in the prior art and not based on the application disclosure. In re Vaeck, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991). Second, there must be a reasonable expectation of success. In re Merck & Co., Inc., 800 F.2d 1091, 231 U.S.P.Q. 375 (Fed. Cir. 1986). Third, the prior art reference(s) must teach or suggest all of the claim limitations. In re Royka, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974).

Claims 16 and 20 depend on claim 11. As explained above, Pirim clearly does not teach or suggest all of the features of parent claim 11. In addition, Breed clearly fails to remedy the deficiencies of Pirim as applied against parent claim 11. Accordingly, dependent claims 16 and 20 are patentable over the combination of Pirim and Breed, and withdrawal of the obviousness rejection is respectfully requested.

IV. Rejection of Claim 17 under 35 U.S.C. § 103(a)

Claim 17 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Pirim in view of U.S. Patent 6,748,308 ("Losey"). Applicants respectfully submit that claim 17 is allowable for at least the following reasons.

Claim 17 depends on claim 11. As explained above, Pirim clearly does not teach or suggest all of the features of parent claim 11. In addition, Losey clearly fails to remedy the deficiencies of Pirim as applied against parent claim 11. Accordingly, dependent claim 17 is patentable over the combination of Pirim and Losey, and withdrawal of the obviousness rejection is respectfully requested.

Conclusion

In light of the foregoing, it is respectfully submitted that the present application is in condition for allowance. Prompt reconsideration and allowance of the present application are therefore earnestly solicited.

Respectfully submitted,

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